

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION**

**BROADCAST MUSIC, INC., et al.,**

**Plaintiffs,**

**v.**

**FOURTH QUARTER, INC. d/b/a SKYBAR  
CAFÉ, PATRICK J. GRIDER AND DANIEL  
GRIDER, each individually.**

**Defendants.**

**CASE NO.:**

**3:07-cv-00921-MHT-CSC**

**APPLICATION TO THE CLERK FOR ENTRY OF DEFAULT  
AND SUPPORTING AFFIDAVIT**

The Plaintiffs (collectively, "BMI"), by and through their attorneys, request the Clerk of the Court to enter judgment by default against the defendants, Fourth Quarter, Inc. d/b/a SkyBar Café, Patrick Grider, and Daniel Grider, individually ("Defendants"), and in support thereof, state the following:

1. The Complaint herein was filed on October 12, 2007.
2. The Court's records indicate that the Defendants were served on October 16, 2007 by personal service.
3. On November 5, 2007, the Court denied the Defendants' motion to dismiss.
4. More than 10 days have passed and the Defendants have failed to answer or otherwise respond to the Complaint, as indicated on the records of this Court.
5. The Defendants are not infants or incompetent persons.

WHEREFORE, BMI respectfully requests that default be entered based upon the Affidavit of Gilbert E. Johnston, Jr., attached hereto. BMI further requests that it be granted

leave to prove damages, costs, and attorneys' fees pursuant to Rule 55 (b)(2) of the Federal Rules of Civil Procedure.

/s/ Gilbert E. Johnston, Jr.  
Gilbert E. Johnston, Jr. (JOH023)  
Attorney for Plaintiffs

**JOHNSTON BARTON PROCTOR & ROSE LLP**

Colonial Brookwood Center  
569 Brookwood Village, Suite 901  
Birmingham, AL 35209  
Telephone: (205) 458-9400  
Facsimile: (205) 458-9500

OF COUNSEL

**CERTIFICATE OF SERVICE**

I hereby certify the above and foregoing Application to Clerk for Entry of Default has been served on the following counsel of record, by placing a copy of the same in the United States Mail, first class postage prepaid and properly addressed:

Davis B. Whittelsey  
Whittelsey, Whittelsey & Poole, P.C.  
600 Avenue A  
Post Office 106  
Opelike, Alabama 36803-0106

On this, the 5th day of December, 2007.

/s/ Gilbert E. Johnston, Jr.  
Of Counsel

**CERTIFICATION**

I certify that the original affidavit of Gilbert E. Johnston, Jr. is being maintained by the filer as set forth in the administrative procedures for filing, signing, and verifying pleadings and documents in the United States District Court for the Middle District of Alabama.

/s/ Gilbert E. Johnston, Jr.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
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BROADCAST MUSIC, INC., et al.,

Plaintiffs,

v.

FOURTH QUARTER, INC. d/b/a SKYBAR  
CAFÉ, PATRICK J. GRIDER AND DANIEL  
GRIDER, each individually.

Defendants.

CASE NO.:

3:07-cv-00921-MHT-CSC

AFFIDAVIT OF GILBERT E. JOHNSTON, JR. IN SUPPORT OF PLAINTIFFS'  
APPLICATION FOR ENTRY OF DEFAULT

STATE OF ALABAMA

COUNTY OF JEFFERSON

Before me, the undersigned authority, personally appeared Gilbert E. Johnston, Jr., who, being duly sworn, deposes and says as follows:

1. My name is Gilbert E. Johnston, Jr. I am one of the attorneys of record for the plaintiffs (collectively, "BMI") in this civil action, and I have personal knowledge of the facts set forth in this Affidavit.

2. BMI's Application for Default is being filed simultaneously herewith in the United States District Court for the Middle District of Alabama, Eastern Division, against Fourth Quarter, Inc. d/b/a SkyBar Café, Patrick Grider, and Daniel Grider ("Defendants") for their failure to answer or otherwise defend as to BMI's Complaint, or serve a copy of any answer or other defense that they might have upon BMI's attorneys of record.

3. The Defendants were duly served with copies of the Complaint and Summons on October 16, 2007, by personal service.

4. On November 5, 2007, the Court denied the Defendants' motion to dismiss.

5. More than 10 days have passed and the Defendants have failed to answer or otherwise defend the Complaint, as required by Rule 12(a) of the Federal Rules of Civil Procedure.

6. The Defendants are not infants or incompetent persons.

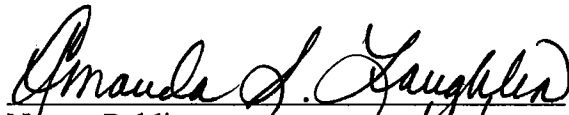
7. BMI is entitled to statutory damages of between not less than \$750 and not more than \$30,000 per claim of infringement pursuant to 17 U.S.C. Section 504(c).

8. BMI is also entitled to costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. Section 505.

9. This Affidavit is executed by affiant herein in accordance with Rule 55 of the Federal Rules of Civil Procedure, for the purpose of enabling BMI to obtain an entry of default against the Defendants for failure to answer or otherwise defend.

  
Gilbert E. Johnston, Jr.

Sworn to and subscribed before me  
this the 5<sup>th</sup> day of December, 2007

  
Notary Public  
My Commission expires: 7/9/2011